APPENDIX.

Statutes Involved.

Revenue Act of 1934.

Section 111. Determination of Amount of, and Recognition of, Gain or Loss.

(a) Computation of Gain or Loss.—The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in Section 113(b) for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) Amount Realized.—The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(c) Recognition of Gain or Loss.—In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purposes of this title, shall be determined under the provisions of Section 112.

Section 112. Recognition of Gain or Loss.

(a) General Rule.—Upon the sale or exchange of property the entire amount of the gain or loss determined under Section 111, shall be recognized, except as hereinafter provided in this section

(b) Exchanges Solely in Kind.

(3) Stock for Stock on Reorganization.—No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of

the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) Same—Gain of Corporation.—No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(g) Definition of Reorganization.—As used in this section and Section 113—

(1) The term "reorganization" means (A) a statutory merger or consolidation. * * *

Section 113. Adjusted Basis for Determining Gain or Loss.

(a) Basis (Unadjusted) of Property.—The basis of property shall be the cost of such property; except that—

(7) Transfers to Corporation Where Control of Property Remains in Same Persons.—If the property was acquired after December 31, 1917, by a corporation in connection with a reorganization and immediately after the transfer an interest or control in such property of 50 per centum or more remained in the same persons or any of them, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. * * *

Section 115. Distributions by Corporations.

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(c) Distributions in Liquidation.—Amounts distributed in complete liquidation of a corporation shall be treated

as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under Section 111, but shall be recognized only to the extent provided in Section 112.

DIVISION FIRST, PART IV, TITLE 1, CHAPTER XIII, SECTION 361, OF THE CIVIL CODE OF CALIFORNIA.

"361. Merger and Consolidation of Corporations: (1) Approval by Board. Statements in Agreement. (2) Signatures. (3) Approval by Shareholders. Certificate of Contents. (4) Amendments to Agreements. (5) Filing of Agreement. (6) Surplus. (7) Separate Existence. Creditors' Rights.

"Any two or more corporations may be (a) merged into one of such constituent corporations, which is herein designated as 'the surviving corporation,' or (b) consolidated into a new corporation, which is herein designated as 'the consolidated corporation,' as follows:

(1) The board of directors of each corporation by resolution shall approve an agreement which shall set forth the terms and conditions of merger or consolidation, and the mode of carrying the same into effect, as well as the manner and basis of converting the shares of the constituent corporations into the shares of the consolidated or surviving corporation. The agreement may also provide for the distribution of cash, property, or securities, in whole or in part, in lieu of shares, to shareholders of the constituent corporations or any class of them; provided, however, that upon such distribution of cash, prop-

erty or securities, the liabilities of the consolidated or surviving corporation, including those derived by it from the constituent corporations, plus the amount of the stated capital of the consolidated or surviving corporation, shall not exceed the value of the assets of such consolidated or surviving corporation.

If the agreement is for a consolidation, it shall state the matters required to be stated in articles of incorporation and these statements shall be deemed to be the articles of the new or consolidated corporation.

If the agreement be for a merger, it shall state any matters with respect to which the articles of the surviving corporation are amended, and the articles shall be deemed to be amended accordingly upon the filing thereof with the secretary of state.

(2) The agreement shall be signed by the president or a vice-president and the secretary or an assistant secretary of each corporation, and acknowledged by the officers executing the same on behalf of their respective corporations.

(3) The agreement must be approved by the vote of the holders of not less than two-thirds of the issued and outstanding shares of each class, even though their right to vote be otherwise restricted or denied, of each of the constituent corporations, at a meeting duly called upon notice of the time, place and purpose thereof, duly given to each shareholder at least twenty days prior to the date of such meeting. There shall be mailed with the notice of such meeting a statement of the general terms of the proposed agreement. Different series of the same class of shares shall not be construed to constitute different classes of shares for the purposes of voting by classes.

The approval of the shareholders may be given either before or after the approval of the agreement by the board of directors.

After such approval by the directors and shareholders has been given, the president or a vice-president and the secretary or an assistant secretary of each corporation shall execute a certificate, which shall be verified by their oath and shall set forth:

(a) The time and place of the meeting of the board of directors;

(b) A copy of the resolution adopted thereat;

(c) The vote in favor of such resolution;

(d) The time and place of the meeting of the shareholders, and the total vote of each class of shares by which the agreement was approved;

(e) The total number of outstanding shares of each class;

(f) A statement of the mailing of the notice of the time, place and purpose of the meeting of the shareholders.

(4) Any amendment to the agreement may be adopted, and the agreement so amended may be approved, by like vote at such meeting of any of the constituent corporations, and if the agreement so amended be approved by like vote at such meeting and by the Board of directors of each of the constituent corporations, the agreement so amended shall be signed and acknowledged and shall have certified therewith the approval of the directors and of the shareholders in the same manner as provided for the original agreement, and shall then be considered the merging or consolidating agreement.

(5) The agreement so approved, executed and acknowledged and the certificates of its approval shall be filed with the secretary of state, and shall thereupon become effective, and the several parties thereto shall be one corporation. A copy of said agreement, certified by the secretary of state, shall be filed with the county clerks of the counties in which the principal office of each corporation is located and a copy of said agreement so certified shall be filed in the office of the county clerk of each county in which each corporation holds real property. A copy of such agreement or of a certified copy thereof certified by any official having custody thereof shall have the same force in evidence as the original, and, except as against the State shall be conclusive evidence of the performance of all conditions precedent to such consolidation or merger, and the creation or existence of the consolidated or surviving corporation.

(6) The surplus appearing on the books of the constituent corporations, to the extent to which it is not capitalized by the issue of shares or otherwise, may be entered as earned or paid-in surplus, as the case may be, on the books of the consolidated or surviving corporation, and may thereafter be dealt with as such.

(7) Upon the merger or consolidation, as provided herein, the separate existence of the constituent corporations shall cease, except that of the surviving corporation in case of merger, and the consolidated or surviving corporation shall succeed, without other transfer, to all the rights and property of each of the constituent corporations, and shall be subject to all the debts and liabilities of each, in the same manner as if the surviving or consolidated corporation had itself incurred them.

All rights of creditors and all liens upon the property of each of said former corporations shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of the consolidation or merger.

Any action or proceeding pending by or against any of such constituent corporations may be prosecuted to judgment, which shall bind the consolidated or the surviving corporation, or the consolidated or surviving corporation may be proceeded against or substituted in their place.

The directors of the corporation may, in their discretion, abandon such merger or consolidation subject to the rights of third parties under any contracts relating thereto, without further action or approval by the shareholders of the corporation, at any time before the merger or consolidation has been completed.—1933:1358."